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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8695 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

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VIRANI ESTATE CORPN

Versus

STATE OF GUJARAT & ORS.

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Appearance:

Shri Suresh M. Shah, Advocate, with Shri Mehul S.

Shah, Advocate, for the Petitioner

Shri A.G. Uraizee, Asst. Govt. Pleader, for the  
Respondents

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 06/03/96

ORAL JUDGEMENT

The order passed by the Competent Authority at  
Rajkot (respondent No.3 herein) on 30th January 1987  
under sec. 21(2) of the Urban Land (Ceiling and

Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No. 2 herein) on 30th May 1988 in Appeal No. Rajkot-51 of 1987 is under challenge in this petition under art. 226 of the Constitution of India. By his impugned order, respondent No. 1 cancelled the permission granted under sec. 21(1) of the Act by the order passed on 15th June 1980 and communicated on 23rd September 1980.

2. The facts giving rise to this petition move in a narrow compass. The petitioner appears to have applied for permission under sec. 21(1) of the Act with respect to three parcels of land bearing survey No. 104(part) situated in Mavdi and survey Nos. 89/1(part) and 89/3(part) situated at Raiya within the urban agglomeration of Rajkot. By the order passed on 15th June 1980 but communicated on 23rd September 1980, such permission came to be granted on certain terms and conditions. A copy thereof together with the schedules annexed thereto is at Annexure C to this petition. Two important conditions deserve to be noted. One condition required the petitioner to commence construction within one year from the date of the order at Annexure C to this petition and another condition required the petitioner to complete the construction work in accordance with the scheme within 5 years from its date. The petitioner was therefore required to complete the scheme on or before 23rd September 1985. It appears that the petitioner did not commence construction within one year from the date of communication of the order at Annexure C to this petition. Thereupon a show-cause notice came to be issued on 5th October 1981 calling upon the petitioner to show cause why the order granting permission at Annexure C to this petition should not be cancelled. It appears that later on, by the order passed on 20th May 1983, the aforesaid show-cause notice came to be withdrawn. It appears that the petitioner could not complete the scheme within 5 years from 23rd September 1980. Thereupon a show-cause notice came to be issued on 20th December 1985 calling upon the petitioner to show cause why the order granting permission at Annexure C to this petition should not be cancelled. A copy of the aforesaid show-cause notice is at Annexure F to this petition. The petitioner filed its reply thereto on 6th January 1986. Its copy is at Annexure G to this petition. By the order passed on 30th November 1987 under sec. 21(2) of the Act, respondent No. 3 cancelled the permission granted by the order at Annexure C to this petition. A copy of the aforesaid order passed on 30th January 1987 is at Annexure B to this petition. The aggrieved petitioner

carried the matter in appeal before respondent No. 2 under sec. 33 of the Act. It came to be registered as Appeal No. Rajkot-51 of 1987. By the order passed on 30th May 1988 in the aforesaid appeal, respondent No.2 dismissed it. Its copy is at Annexure A to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 226 of the Constitution of India for questioning the correctness of the order at Annexure B to this petition as affirmed in appeal by the appellate order at Annexure A to this petition.

3. It transpires from the order at Annexure C to this petition that the petitioner was required to construct 45 dwelling units not exceeding 40 square meters in the plinth area and 41 dwelling units not exceeding 80 square meters of the plinth area in the aforesaid lands. It transpires from the material on record that the petitioner constructed in all 84 dwelling units not exceeding 40 square meters of the plinth area in survey No. 104 situated at Mavdi. According to the scheme sanctioned by the order at Annexure C to this petition, the petitioner was supposed to construct in all 86 dwelling units as aforesaid. It has constructed in all 84 dwelling units in one parcel of land only. That was certainly not in accordance with the scheme. Learned Advocate Shri Shah for the petitioner informs me that the petitioner has already submitted a revised scheme to respondent No. 3 and it is pending for consideration.

4. So far as lands bearing survey Nos. 89/1 and 89/3 are concerned, it is the case of the petitioner that it had executed a sale agreement (popularly known as Banakhat) in favour of some third party prior to coming into force of the Act and a suit was filed for its specific performance in the competent court at Rajkot. The plaintiff in that suit had obtained an interim relief in the nature of injunction against changing the status-quo of the said lands. In that view of the matter, according to learned Advocate Shri Shah for the petitioner, no construction activity could be undertaken in the aforesaid two parcels of land.

5. On behalf of the petitioner, an additional affidavit has been filed on 21st February 1996. It has been taken on record. It has been mentioned therein that the aforesaid suit was settled between the parties and it was disposed of on 10th February 1995. Pursuant thereto, the petitioner got possession of the aforesaid lands bearing survey Nos. 89/1 and 89/3. It has been urged by and on behalf of the petitioner that the petitioner

proposes to submit a revised scheme for construction of not fewer than 100 dwelling units in the aforesaid two parcels of land and the construction of dwelling units in accordance with the revised scheme, if and when sanctioned, would be completed within the stipulated time-limit of 5 years from the date of sanction of such revised scheme.

6. It cannot be gainsaid that the delay in completion of the scheme could be condoned by imposition of a suitable penalty on the land-holder in view of the ruling of this Court in the case of Givndlal Chunilal Dalvadi v. State of Gujarat and Others reported in 1994(1) Gujarat Current Decisions 526 and the ruling of this Court in the case of Suvarnaben, wd/o Thakorlal Gordhandas and another v. The Competent Authority and Additional Collector (ULC) and another reported in AIR 1996 Gujarat 13.

7. In the present case, the petitioner has already constructed 84 dwelling units on the land bearing survey No. 104 situated at Mavdi. He could not complete the entire scheme within the period of 5 years from the date of communication of the order at Annexure C to this petition as it was not in possession of the lands bearing survey Nos. 89/1 and 89/3. As indicated hereinabove, the revised scheme in respect of the land bearing survey No. 104 situated at Mavdi is already pending and a revised scheme for construction of not fewer than 100 dwelling units in the aforesaid two parcels of land bearing survey Nos.. 89/1 and 89/3 situated at Raiya is proposed to be submitted by 27th March 1996. Learned Advocate Shri Shah for the petitioner indicates that the revised scheme for the aforesaid two parcels of land could be for nearly 280 dwelling units of different sizes for weaker sections of the society. In that view of the matter, delay in completion of the scheme can be condoned by imposition of a suitable penalty on the petitioner at the rate of Rs. 1000 per dwelling unit.

8. As indicated hereinabove, the petitioner has already raised 84 dwelling units on the land bearing survey No. 104 situated at Mavdi. The revised scheme submitted by the petitioner in that regard need be finalised as expeditiously as possible preferably within two months from today. The petitioner shall deposit in this Court the penalty of Rs. 84,000/- so far as that revised scheme is concerned within 15 days from the date of sanction of the said revised scheme for 84 dwelling units.

9. So far as the revised scheme for two parcels of land bearing survey Nos. 89/1 and 89/3 situated at Raiya is concerned, respondent No.3 shall decide the matter preferably within 4 months from the date of submission of such revised scheme keeping in mind various schemes sanctioned in various district towns in the State of Gujarat. The petitioner is directed to deposit in this Court a penalty at the rate of Rs. 1000 per dwelling unit within 15 days from the date of sanction of the revised scheme for the aforesaid parcels of land bearing survey Nos. 89/1 and 89/3.

10. In the result, this petition is accepted to the aforesaid extent. The order passed by the Competent Authority at Rajkot (respondent No. 3 herein) on 30th January 1987 under sec. 21(2) of the at Annexure B to this petition as affirmed in appeal by the appellate order passed by the Urban Land Tribunal at Ahmedabad on 30th May 1988 in Appeal No. Rajkot-51 of 1987 at Annexure A to this petition is quashed and set aside. Respondent No. 3 is directed to act according to law in the light of this judgment of mine with respect to the revised scheme already submitted for survey No. 104 situated at Mavdi and the scheme to be submitted with respect to survey Nos. 89/1 and 89/3. The petitioner shall also act accordingly in the light of this judgment of mine with respect to deposit of the penalty amount. The amount so deposited in this Registry will be paid over to the concerned department of the State Government. Rule is accordingly made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.

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